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UNCLAS ROME 000629

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STATE FOR EB/IPE WILSON, URBAN
STATE PASS USTR FOR BPECK, JSANFORD
COMMERCE PASS USPTO DLASHLEY, JOHNSON

E.O. 12958: N/A

TAGS: [ECON](#) [ETRD](#) [IT](#) [KIPR](#)

SUBJECT: SPECIAL 301 REVIEW, MISSION ITALY INPUT

REF: A. SECSTATE 24592

[B](#). 04 ROME 2009

[C](#). 04 ROME 2240

[D](#). 04 ROME 4585

[1](#)1. Summary: Embassy Rome recommends that Italy remain on the 301 Watch List for 2005. Piracy rates, though showing some improvement in 2004, continue to be among the worst in Western Europe. Industry losses remain unacceptably high, wide-spread street vending of pirated and counterfeit goods continues. On the positive side, Italian law enforcement officials, especially the financial police, stepped up raids and crackdowns last year. Mission Italy continues to focus its outreach efforts on Italian judges, who generally remain reluctant to impose jail sentences, even in cases of egregious IPR theft. In May, Italy's parliament passed a new law criminalizing unauthorized Internet file sharing, though Italy's Internet service providers are leading a campaign to water down this new statute. End Summary.

Piracy Rates: Some Improvement, But Still High.

[1](#)2. Copyright piracy levels, as reported by industry associations, fell or remained stable in most sectors in [2](#)004. The music industry saw a slight increase in piracy rates from 22 percent in 2003 to 23 percent in 2004. The publishing industry reported no change in piracy rates at 23 percent. Software showed a significant drop in 2004 with the piracy rate for entertainment software falling 13 percentage points to 34 percent. Business software piracy, according to the report by the International Intellectual Property Alliance (IIPA), fell 2 percentage points to 47 percent with losses to U.S. software firms falling from \$642 million to \$567 million. (Note: A local representative of the Business Software Alliance noted that the IIPA report only includes losses to American companies and that losses to all BSA member companies are much higher, over \$1 billion per year. Nevertheless, he said, BSA members report piracy rates in Italy as either staying stable or falling slightly in 2004. End note.)

[1](#)3. Motion picture piracy decreased to fifteen percent in 2004 from 20 percent in 2003, yet industry losses actually increased from \$140 million to \$160 million. The head of the Federazione Anti-Pirateria Audiovisiva (FAPAV), a Milan-based anti-piracy group funded by the movie industry, attributes this improved piracy rate to strong growth of legitimate DVD sales rather than a reduction in the market for pirated movies. Still, according to FAPAV, the movie industry did witness a real decrease in on-air television and pay-TV piracy in Italy in 2004.

Enforcement Also Improving, but Still Uneven.

[1](#)4. IPR enforcement, though still insufficient, improved noticeably in 2004. Of particular note is an over four-fold increase in the reported number of pirated DVDs seized by police, nearly 913,000 in 2004 versus 202,000 in 2003. Italy's financial police, the Guardia di Finanza (GDF), is by far the most active law enforcement body with respect to IPR. The GDF conducted several successful operations in 2004, including "Operation Copyright," which involved 250 officers and resulted in the seizure of 50,000 illegal DVDs and CDs in the Rome area. In Tuscany last October, the GDF conducted mass raids that resulted in the seizure of 35,000 counterfeit leather goods imported from China. In November, a GDF crackdown in Brescia netted illegal CDs, DVDs, and clothing worth Euro 900,000 (\$1.1 million). Also in 2004, the GDF signed an agreement with Confindustria, Italy's main business association, to improve information sharing on pirating and counterfeiting. Post will continue to encourage such efforts and is hopeful that raids will increase in scope in 2005.

[1](#)5. Mission Italy continues to observe wide variations in IPR enforcement between regions. Congen Milan reports that an agreement signed between the GDF, police, and the Milan municipal government resulted in a significant drop in street vending of pirated and counterfeit goods. An Italian music industry contact told Econoff that overall street-level

enforcement improved in 2004, though the situation continues to vary from town to town.

Street Vending Unabated in Many Areas.

16. The continuing problem of street vending of pirated and counterfeit merchandise deserves special mention. Occasional crackdowns aside, street vending goes unchallenged on a day-to-day basis in most major cities (though the situation tends to be better in northern municipalities, such as Milan). Vendors of pirated CDs, DVDs, and software frequently display their goods outside Rome's supermarkets and in and around licensed street markets. On a given weekend in Naples, vendors of optical media, watches, and handbags are lined up side-by-side along the main shopping streets. Such sales are also common in tourist areas. During an October 2004 trip to Venice, Econoff observed peddlers of fake handbags in such numbers that they significantly impeded the normal flow of pedestrian traffic. Congen Naples' police contacts have remarked that there is popular opposition to crackdowns against street vendors, who are typically poor immigrants. Several Naples officials have commented that it is better that these immigrants sell fake goods than engage in more serious crime. The freedom with which street vendors operate adds to the already too-prevalent public attitude that IPR theft is not a "real crime." The ready availability of pirated and counterfeit products on Italian sidewalks sends a much more powerful message than the GOI's public education campaigns exhorting citizens to respect IPR.

Italy's Judiciary Slowly Coming Around.

17. Italy's fiercely independent judiciary remains a major obstacle to better IPR enforcement. As a group, Italian judges have been reluctant to impose meaningful criminal penalties for IPR crime. We note that in 2004 only nine people received jail sentences of over one year for IPR theft, a strikingly low number given the scale of the problem and the connections to Italian organized crime groups. Some justices continue to cite the economic hardship of defendants as justification for light and/or suspended sentences. Such slap-on-the-wrist punishments, in turn, discourage police and prosecutors from aggressively pursuing IPR cases. In an indicative anecdote, reported by Congen Florence, a judge implied that Florence police officials, by conducting an anti-piracy/counterfeiting crackdown, were merely pandering to the interests of the city's rich downtown merchants.

18. Mission Italy notes, however, that such attitudes are not universal within Italy's judiciary. Many judges do recognize the wider economic damage caused by piracy as well as the connections between the trade in pirated/counterfeit goods and organized crime. Embassy Rome, in cooperation with industry groups, continues to host regular workshops and other outreach efforts aimed at sensitizing Italian judges to IPR issues. Congen Naples is also sponsoring IPR seminars specifically aimed at judges and prosecutors in the south, where most production of pirated CDs, DVDs and software takes place. While a growing number of judges "get it" in terms of IPR, obtaining a system-wide increase in penalties will take time. Even then, verdicts and sentences handed down in IPR cases will continue to differ very much depending on the individual judges presiding.

Italy Passes First Internet Piracy Law.

19. The so-called Urbani Law (named after Italy's minister of culture--refs B,C), which was passed by Italy's parliament in May 2004, represents a commendable effort to address the growing problem of Internet piracy. The law criminalizes the exchanging of copyrighted works regardless of whether such file sharing is done for cash profit or simply for "gain," i.e. downloading music, film, or software to avoid having to purchase a legitimate copy. Music and film industry groups believe the introduction of the concept of "for gain" piracy is a significant improvement in Italy's legal IPR framework. Criminalization of "for gain" piracy is essential if Italy is to create a deterrent to on-line piracy, since most Internet file sharing involves swapping copyrighted works for free. The law appears to have dampened the amount of illegal file sharing in Italy, and FAPAV reports that on-line piracy of films decreased in 2004.

Backlash from Italian ISPs

10. Italy's Internet Service Providers (ISPs), however, oppose the Urbani Law and are spearheading a campaign to roll back the criminal provisions to decriminalize "personal use" downloading of copyrighted works. Embassy believes Italian ISPs are concerned both with their own liability for illegal

file sharing conducted on their networks, as well as the Urbani Law's potential to reduce demand for broad-band Internet access. (Broad-band access remains significantly more expensive in Italy than in the United States.) Music and film industry groups have warned that the revisions, which appear likely to pass in 2005, could make Italy a legal safe haven for unauthorized file sharing. Copyright industry groups are already planning a campaign to reintroduce the criminalization of "for gain" Internet piracy, perhaps with an amendment to Italy's main copyright law.

The Virtual Sticker

11. Another difficulty with the Urbani Law is the introduction of regulatory requirements strongly opposed by BSA (ref D). In its present form, the Urbani Law requires copyrighted Internet files to contain a "virtual sticker," a code that certifies payment of royalties. The law also imposes private copy levies on some computer hardware (e.g., CD/DVD burners) used to reproduce copyrighted works. The BSA claims these levies would raise the cost of selling software in Italy. BSA believes these provisions subject rights holders to costly administrative burdens to obtain protections that should be extended automatically to copyrighted material.

Pharmaceuticals

12. Embassy notes PhRMA's recommendation that Italy be upgraded to the Priority Watch List. We agree that price ceilings imposed by the GOI within its national health system disproportionately impact drug developers and reduce rewards for innovation. At the same time, pharmaceutical industry contacts tell us that the problem of counterfeit drugs in Italy is very limited. New regulations requiring the bar-coding of every vial of medicine should further reduce the ability of fake medicines to enter Italy's market. Mission intends to continue to work with the pharmaceutical industry to address the inequities of Italy's pricing regime, but we do not believe upgrading Italy to priority watch list status is justified.

Comment

13. Piracy rates in Italy remain much too high compared to other G-7 countries. Easy street-level access to pirated and counterfeit goods remains the norm in this, the world's sixth-largest market economy. Italy should stay on the 301 Watch List in 2005, yet Italy also deserves recognition for some significant improvements in 2004, particularly the drop in piracy rates and the GDF's enforcement efforts. While there is always the possibility of backsliding, Italy is moving in the right direction and could become a candidate for removal from the Watch List, possibly as early as 2007 or 2008, if current trends continue. End comment.

Congens Milan, Naples, and Florence contributed to this report.

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2005ROME00629 - Classification: UNCLASSIFIED